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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,972	02/28/2002	Ken-ichi Kosuna	1617.22B	3682
24040	7590	03/28/2005	EXAMINER	
DENNIS G. LAPOINTE LAPOINTE LAW GROUP, PL PO BOX 1294 TARPO SPRINGS, FL 34688-1294			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/045,972	KOSUNA, KEN-ICHI	
Examiner	<b>Art Unit</b>		
Susan D. Coe	1654		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 January 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 21 is/are allowed.

6)  Claim(s) 1-20 and 22 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

**DETAILED ACTION**

1. The amendment filed January 19, 2005, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claim 22 has been added.
3. Claims 1-22 are pending.

***Claim Rejections - 35 USC § 112***

Claims 15, 20, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 15 and 20 are indefinite because there is a conflict in scope between the parent claim and these dependent claims. The parent claims use the transitional phrase "consisting essentially of" while claims 15 and 20 state that the active polymer "comprises" specific oligomers. This use of the open claim language in the dependent claims makes the scope of the claims unclear.

5. Claim 22 is indefinite because the water temperatures that are encompassed by "hot" are not defined. In addition, the claim states that the catechin and epicatechin are present in a "specific ratio," but the claim does not define this ratio.

***Claim Rejections - 35 USC § 102***

6. Claims 1-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 07236440 (English translation provided).

Applicant's claims are drawn to a composition comprising an aqueous extract from buckwheat seeds. The extract contains catechin-epicatechin polymers.

JP '440 teaches pharmaceutical composition which is an aqueous extract from buckwheat flour. The extract is made by extracting the buckwheat in water at room temperature to 60 degrees C for a half hour to an hour (see paragraph 14 of the English abstract). The extract is used as a pharmaceutical product to lower cholesterol levels.

The reference does not specifically teach that the buckwheat extract has the claimed polymers. However, according to applicant's specification, a buckwheat extract made by extracting buckwheat in an aqueous solvent at room temperature to 60 degrees C for an hour will produce an extract that contain the polymers of interest (see page 8). Thus, since the reference extract is extracted in this same manner, the reference extract would inherently contain the claimed polymers.

The reference does not specifically teach that the composition has all of the same effects on the body as those claimed by applicant; however, since the composition taught by the reference is the same as the claimed composition, the reference composition would inherently have to have the same effects if applicant's invention functions as claimed.

7. Claim 21 is allowable. Claims 1-20 and 22 are rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

*Susan D. Coe*  
3-17-05

Susan D. Coe  
Primary Examiner  
Art Unit 1654